

covered by the pay system without a change in position (as a result of a coverage determination made under §9701.102(b)) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the DHS system.

(b) DHS will issue implementing directives prescribing the policies and procedures necessary to implement these transitional provisions.

**§9701.372 Creating initial pay ranges.**

(a) DHS must, after coordination with OPM, set the initial band rate ranges for the DHS pay system established under this subpart. The initial ranges will link to the ranges that apply to converted employees in their previously applicable pay system (taking into account any applicable special rates and locality payments or supplements).

(b) For employees who are law enforcement officers as defined in 5 U.S.C. 5541(3) and who were covered by the GS system immediately before conversion, the initial ranges must provide rates of basic pay that equal or exceed the rates of basic pay these officers received under the GS system (taking into account any applicable special rates and locality payments or supplements).

**§9701.373 Conversion of employees to the DHS pay system.**

(a) When a pay system is established under this subpart and applied to a category of employees, DHS must convert employees to the system without a reduction in their rate of pay (including basic pay and any applicable locality payment under 5 U.S.C. 5304, special rate under 5 U.S.C. 5305, locality rate supplement under §9701.332, or special rate supplement under §9701.333).

(b) When an employee receiving a special rate under 5 U.S.C. 5305 before conversion is converted to an equal rate of pay under the DHS pay system that consists of a basic rate and a locality or special rate supplement, the conversion will not be considered as resulting in a reduction in basic pay for the purpose of applying subpart F of this part.

(c) If another personnel action (e.g., promotion, geographic movement)

takes effect on the same day as the effective date of an employee's conversion to the new pay system, DHS must process the other action under the rules pertaining to the employee's former system before processing the conversion action.

(d) An employee on a temporary promotion at the time of conversion must be returned to his or her official position of record prior to processing the conversion. If the employee is temporarily promoted immediately after the conversion, pay must be set under the rules for promotion increases under the DHS system.

(e) The Secretary has discretion to make one-time pay adjustments for GS and prevailing rate employees when they are converted to the DHS pay system. DHS will issue implementing directives governing any such pay adjustment, including rules governing employee eligibility, pay computations, and the timing of any such pay adjustment.

(f) The Secretary has discretion to convert entry/developmental employees in noncompetitive career ladder paths to the pay progression plan established for the Entry/Developmental band to which the employee is assigned under the DHS pay system. DHS will issue implementing directives governing any such conversion, including rules governing employee eligibility, pay computations, and the timing of any such conversion. As provided in paragraph (a) of this section, DHS must convert employees without a reduction in their rate of pay.

**§9701.374 Special transition rules for Federal Air Marshal Service.**

Notwithstanding any other provision in this subpart, if DHS transfers Federal Air Marshal Service positions from the Transportation Security Administration (TSA) to another organization within DHS, DHS may cover those positions under a pay system that is parallel to the pay system that was applicable to the Federal Air Marshal Service within TSA. DHS may, after coordination with OPM, modify that system. DHS will issue implementing directives on converting Federal Air Marshal Service employees to

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any new pay system that may subsequently be established under this subpart, consistent with the conversion rules in § 9701.373.

### Subpart D—Performance Management

EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart D to part 9701 was rescinded.

#### § 9701.401 Purpose.

(a) This subpart provides for the establishment in the Department of Homeland Security of at least one performance management system as authorized by 5 U.S.C. chapter 97.

(b) The performance management system established under this subpart, working in conjunction with the pay system established under subpart C of this part, is designed to promote and sustain a high-performance culture by incorporating the following features:

(1) Adherence to merit principles set forth in 5 U.S.C. 2301;

(2) A fair, credible, and transparent employee performance appraisal system;

(3) A link between elements of the pay system established in subpart C of this part, the employee performance appraisal system, and the Department's strategic plan;

(4) Employee involvement in the design and implementation of the system (as provided in § 9701.105);

(5) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

(6) Periodic performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period, with specific time-tables for review;

(7) Effective safeguards so that the management of the system is fair and equitable and based on employee performance; and

(8) A means for ensuring that adequate resources are allocated for the design, implementation, and administration of the performance management system that supports the pay system established under subpart C of this part.

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#### § 9701.402 Coverage.

(a) This subpart applies to eligible DHS employees in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary or designee under § 9701.102(b), except as provided in paragraph (c) of this section.

(b) The following employees are eligible for coverage under this subpart:

(1) Employees who would otherwise be covered by 5 U.S.C. chapter 43; and

(2) Employees who were excluded from chapter 43 by OPM under 5 CFR 430.202(d) prior to the date of coverage of this subpart, as determined under § 9701.102(b).

(c) This subpart does not apply to employees who are not expected to be employed longer than a minimum period (as defined in § 9701.404) during a single 12-month period.

#### § 9701.403 Waivers.

When a specified category of employees is covered by the performance management system(s) established under this subpart, 5 U.S.C. chapter 43 is waived with respect to that category of employees.

#### § 9701.404 Definitions.

In this subpart—

*Appraisal* means the review and evaluation of an employee's performance.

*Appraisal period* means the period of time established under a performance management system for reviewing employee performance.

*Competencies* means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position.

*Contribution* means a work product, service, output, or result provided or produced by an employee that supports the Departmental or organizational mission, goals, or objectives.

*Minimum period* means the period of time established by DHS during which an employee must perform before receiving a rating of record.

*Performance* means accomplishment of work assignments or responsibilities.

*Performance expectations* means that which an employee is required to do, as described in § 9701.406, and may include observable or verifiable descriptions of